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SYMPOSIUM: IMMIGRATION REFORM LAWS: REDEFINING WHO BELONGS

WHO MAY GIVE BIRTH TO CITIZENS? REPRODUCTION, EUGENICS AND IMMIGRATION

By Dorothy E. Roberts*

It is probably apparent that I disagree with Peter Brimelow's¹ position. What I like about his way of putting forward his opposition to immigration policy is that at least he is honest about it. I think what Peter Brimelow says is true: there is a difference between what the American identity is and what some wish the American identity to remain as—namely, a White national identity. Are there reasons to change the White national identity? I also like what he says about this being not only a question of race, but also a question of political power and a question of what our vision of America will look like.

I did not come to the issue of immigration because I am an expert on immigration policy; I have done little work on it. My specialization is reproductive health policy. However, it occurred to me that a number of the proposals that the anti-immigration folks were putting on the table had to do with the children of undocumented immigrants. In other words, the issue of immigration is not just a matter of keeping people out at the borders; it is also a question of the status of the children of undocumented immigrants who are already in the United States. It seems to me that this is a question of reproductive

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1. Peter Brimelow, the senior editor of *Forbes* and the author of *Alien Nation: Common Sense about America's Immigration Disaster* (1995), was a panelist at the symposium.

health policy and a question of who has the right to give birth to a citizen of the United States.

There are two ways in which this question is proposed. You heard about these ways already from the panelists, but let me focus on them. One way is by denying reproductive health services to undocumented immigrants. This is part of the general trend of the new welfare laws. For example, laws like Proposition 187 deny social benefits to undocumented immigrants.² It is interesting to me that a particular focus of this trend toward denying health services to undocumented immigrants is occurring in California. I am particularly interested in Pete Wilson's³ campaign to decrease the number of immigrants giving birth in the United States. The denial of reproductive health services was one of the elements of Proposition 187. In addition, it was the first thing that Pete Wilson did when he was elected governor. Part of Pete Wilson's anti-immigration rhetoric was to issue an executive order directing health service workers not to give prenatal health care to undocumented immigrant women.⁴ Another part of his rhetoric included throwing away statistics about the huge number of undocumented immigrants giving birth in the United States. One of his spokespeople said, "Of course, these people should get prenatal care but they just need to go back to their country to get it."⁵

2. Proposition 187 was passed by California voters on November 8, 1994. See Ann Davis, *The Return of the Nativists: Inspired by California's Prop. 187, Activists Seek to Tap Anti-Alien Fervor*, NAT'L L.J., June 19, 1995, at A1. One of the stated objectives of the law was "to prevent illegal aliens in the United States from receiving benefits or public services in the State of California." Lolita K. Buckner Inniss, *California's Proposition 187—Does it Mean What it Says? Does it Say What It Means? A Textual and Constitutional Analysis*, 10 GEO. IMMIGR. L.J. 577, 578 n.2 (1996).

3. Peter Wilson is the governor of California.

4. See *Welfare Reform California: Prenatal Care \$\$ For Illegal Immigrants Ends*, ABORTION REP. (Am. Pol. Network), Aug. 28, 1996, at 9 ("Pro-choice Gov. Pete Wilson (R) on 8/27 ordered state agencies to stop providing services for illegal immigrants, 'most notably' prenatal care for 'approximately' 70,000 women annually").

5. See *id.* ("Wilson spokesperson Sean Walsh said Wilson believed that 'every woman in the world deserves access to prenatal care,' but if a woman was in California illegally, 'her care should be born by her own nation'").

The second way in which the immigration laws influence reproductive health policy is by denying, in effect, birthright citizenship to undocumented immigrants.⁶ The immigration laws may even deny citizenship to the broader class of non-naturalized immigrants. When Professor Rush⁷ asked people to raise their hands to indicate if they were immigrants or the children of immigrants, I raised my hand because my mother is from Jamaica. I can remember when she was naturalized. It occurred to me that maybe, under some of these proposals, I would not be considered a citizen of the United States either.

There are proposals before Congress to abolish the Fourteenth Amendment of the United States Constitution.⁸ This is part of the Republican platform—the idea of abolishing the notion that if you were born in the United States or within a U.S. jurisdiction you are automatically a citizen. Peter Brimelow is correct that this is not a majority rule around the world, but it is a rule in the United States because of particular historic reasons. There has always been a debate about who should be a citizen of the United States. This is not something new. The definition of citizenship in America has always been exclusionary. I am calling for the government to make it more inclusive.

I am not at all saying that this move against immigrants is something radical and that we should assume an American tradition of inclusiveness. No—from the beginning, America defined citizenship as exclusionary. It had to do that because there was a large group of people living in the United States who were slaves. There was no way to define citizenship in America inclusively without granting rights to slaves. Therefore, America has a history of defining citizenship as only belonging to White people. Initially, citizenship was denied to African people who were brought here as slaves. Then, citi-

6. See, e.g., Citizenship Reform Act of 1995, H.R. 1363, 104th Cong. (1995). This bill would deny citizenship to children born in the United States whose parents are not themselves citizens or permanent legal residents. See *id.*

7. Sharon Rush, Professor of Law at the University of Florida College of Law was a panelist at the symposium.

8. See, e.g., *supra* note 6 and accompanying text.

zenship was denied to Asians and later to Latinos.⁹ It was essential to make a distinction between White masters and their slaves. The history of America is not one of opening up its arms to everybody.

In fact, as Mr. Brimelow pointed out in his book,¹⁰ the first naturalization law in America, in 1790, only allowed a free White person to become a citizen of the United States.¹¹ Now, we were supposed to have changed that with the Fourteenth Amendment. That was the whole point of the Fourteenth Amendment—to abolish *Dred Scott*, the U.S. Supreme Court decision holding that Blacks were not citizens.¹² The Fourteenth Amendment was enacted to overrule that decision and to have a new rule in America that if you were born here, whether you were Black or White, you were entitled to be considered a full citizen of the United States.¹³ That is the new rule that those who want to abolish the Fourteenth Amendment are trying to get rid of.

There is also a history, based on the Eugenics Movement, of tying immigration to race. In 1924, there was testimony by Eugenicists, who believed that certain races were genetically inferior and that the inferior stock was infiltrating the United States. At that time, they were talking about Southern Europeans, Italians, Poles and Jews. Those were considered the inferior races of that time. The Eugenicists convinced Congress to pass a law based on quotas that would keep "ge-

9. See Uniform Naturalization Act of 1790, ch. 3, 1 Stat. 103 (repealed 1795), which restricted the right to naturalization to White people. See also Chinese Exclusion Act, ch. 126, § 14, 22 Stat. 58 (1882), repealed by Act of Dec. 17, 1943, Pub. L. No. 78-199, 57 Stat. 600.

10. ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER (1995).

11. Uniform Naturalization Act of 1790, ch. 3, 1 Stat. 103 (repealed 1795).

12. *Scott v. Sandford*, 60 U.S. 393, (19 How.) 393 (1856) (holding that neither slaves nor their descendants were citizens for purposes of federal jurisdiction).

13. See U.S. CONST. Amend. XIV, § 1, cl. 1 (stating that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside").

netically inferior" people out.¹⁴ That is also part of America's history of immigration policy.

Some people are now calling for a return to a national identity. This change is not based on the number of immigrants, because in fact, the relevant rate of **immigration** is lower now than it was at its peak in the earlier part of the century.¹⁵ I think what has changed is that in the past the predominant group was European. Today, the predominant group is comprised of dark-skinned people and that is perceived as a threat.

The problem is not that native-born Blacks are being displaced by immigrants from other countries. The problem is that all of these dark-skinned people are threatening to displace the political power that Whites have traditionally had in America. Part of this is seen as a cultural problem. The problem is that as the number of immigrants grows, the culture of America will change. Peter Brimelow says that it is up to those who do not see a problem with that to explain why. But I do not know why the culture of America has to be White.

Why is it that as long as White people were a majority, people from other countries had to assimilate to that identity? Why then can it not be that as other cultures grow in number, Whites will have to assimilate to those cultures? In a way I am using the assimilation model to turn the argument on its head. I think the real question is why not have the view of the American identity be more inclusive and more pluralist. We need a new conception of American identity. It cannot just be based on the old notion of American identity as being White. I think that it is interesting that Mr. Brimelow mentioned affirmative action. I think that affirmative action is an important piece of this discourse because it is not just a loss of culture that people

14. See National Origins Act ("Johnson-Reed"), ch. 190, 43 Stat. 153 (1924) (repealed 1952) (setting up a quota system whereby the level of immigrants from each country was limited to two percent of those already in the United States who were from the country in question).

15. See U.S. BUREAU OF CENSUS, STAT. ABSTRACT OF THE U.S. 10 (1997). For the period of 1901-1910, the rate of immigration, measured by dividing the sum of annual immigration totals by the sum of annual population totals for the same number of years, was 10.4%. See *id.* For the period of 1981-1990, the rate had decreased to 3.1%. See *id.*

fear, it is the loss of political status as well. Affirmative action is seen as fomenting and supporting this loss of political status.

I was one of the people who quoted the "blonde hair and blue eyes" statement.¹⁶ Mr. Brimelow denied the significance of having blonde hair and blue eyes, as he expressed a blatantly racist view of what the American citizen should look like: "My concern is that he is going to have to compete with all those who do not have blonde hair and blue eyes, and, who do not have a historical relationship with this country." But what is the test for a historical relationship with America? Mr. Brimelow, how do you have a historical relationship with America?¹⁷

PETER BRIMELOW: I am just an immigrant doing the dirty work.

PROFESSOR ROBERTS: His son does not have any more historical relationship with America than the children of other immigrants in the United States. What his son does have is blonde hair and blue eyes, and that is the point.

I am really praising Mr. Brimelow because he is the one who says what everyone else is thinking but is afraid to say. I think that this is so valuable. He mentions Steve Forbes¹⁸ and the survey on the servant crisis in some exclusive hills somewhere. I think that is important as well. Denying children the right of citizenship is a way of saying: "You do not belong. You can work for me and I can exploit your labor in this country or in other countries but you do not deserve to be considered a citizen."¹⁹ It is a way of exploiting and devaluing people; using

16. See Dorothy Roberts, *Who May Give Birth to Citizens?*, 17 WOMEN'S RTS. L. REP. 275, 278 (1996).

17. Peter Brimelow is originally from Great Britain.

18. Steve Forbes is the owner of *Forbes*.

19. See, e.g., Ruben J. Garcia, Comment, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law*, 17 CHICANO-LATINO L. REV. 118, 136-37 (1995) ("During the [Proposition 187] campaign it was revealed that [U.S. Senate candidate Michael Huffington, an advocate for the bill] hired an undocumented woman as a nanny in violation of the employer sanctions provisions of IRCA. Huffington refused to change his position on Proposition 187, saying that it 'deals with taxing Californians for welfare, health and educational services for illegal immigrants'"). IRCA is the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359

their labor and what they contribute, yet not valuing them as equal members of society.

I think that he is right that this debate calls into question whether America should or should not have a White identity. I would say that everyone has the burden of participating in this debate. I should not have to explain why America should not be a White culture. I have every right to participate as well. We do need a national debate that brings these issues to the forefront. My suggestion is to redefine the American identity, to value all cultures—a definition which is more pluralistic and inclusive.

(1986) (codified in scattered sections of 5, 7, 8, 20, 26, 29, 31, 42 & 50 U.S.C.).